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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,138	07/23/2003	Gerhard N. Schrauzer	03-SCH/101	8281
22890	7590	07/19/2006	EXAMINER	
RICHARD D. CLARKE LAW OFFICE OF RICHARD D. CLARKE 3755 AVOCADO BLVD., #1000 LA MESA, CA 91941-7301			PRATT, HELEN F	
		ART UNIT	PAPER NUMBER	
			1761	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/625,138	SCHRAUZER, GERHARD N.
	<b>Examiner</b>	<b>Art Unit</b>
	Helen F. Pratt	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 July 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-38 is/are rejected.      1-36  
 7) Claim(s) 37,38 is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 recites the limitation "said uncontaminated plant material" in line 3.

There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Objections***

Claim 38 is objected to because of the following informalities: claim 38 should depend from claim 37, which also contains carbon dioxide. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 21-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto (JP 59022583) or Abd-El Malek et al. (Soil Organic Matter study, Proc. Symp. 91977).

Miyamoto discloses a process of making a nutritional composition by burning tree material to make ash and treating the ash with an organic acid (acetic) in amounts 6-7 times that of the ash to give a stock solution which is evaporated to dryness (powder) (abstract). Claims 20 , 24 and 27 differ from the process in further treating the reacted plant ash to make a consumable mineral supplement. However, Miyamoto discloses that fruits and vegetables can be dipped into the mineral composition, which means that the mineral mixture is suitable for human consumption. Therefore, it would have been obvious to make a mineral composition as disclosed by Miyamoto.

Claims 21 and 22 further require the cited processing steps. The reference discloses that the extract is filtered, evaporated to a powder (abstract). Nothing new is seen in the heating and dilution which are common processing steps. It is noted in the specification, as on page 10 and on that not all of the claimed steps are required. It is seen that not all of the steps are critical, and it would have been within the skill of the ordinary worker to use known processing steps such as homogenization and pasteurization when required. Therefore, it would have been obvious to use known processing steps as shown by the reference.

Claim 21 further requires selectively varying the plant material depending upon the analyzed mineral content of said plant material. However, this is seen as being within the skill of the ordinary worker, to use plants which will provide particular mineral contents.

Claim 23 further requires that the plant material is varied to provide a varied composition. However, it is known that the nutrition found in plants depends on the

genus and soil conditions and other environmental factors. Therefore, it would have been obvious to use such plants.

Claim 25 further requires using an inorganic acid instead of an organic acid and claim 26 further requires mixing the inorganic acid with an organic acid. However, nothing new is seen in using an inorganic acid absent a showing of unexpected results using the inorganic acid. Therefore, it would have been obvious to use an inorganic acid in place of an organic acid.

Claim 28 further requires that the powdered form be compressed into pill form, claim 29 requires encapsulation into gelatin capsules and claim 30, adding the composition directly to animal feed. However, nothing new is seen in treating as claimed mineral mixtures, which are routinely made into pills, or added to animal feeds. Therefore, it would have been obvious to treat as claimed because these forms of using minerals are common.

Claim 35 further requires adding sweeteners, fragrances, food coloring or preservative to the composition. Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no

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one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to add other ingredients to the claimed mineral composition.

Claim 31 further requires that the mineral composition be in solution form. Miyamota discloses the claimed mineral mixture in solution form (abstract). Therefore, it would have been obvious to use the mineral mixture in solution form as disclosed by Miyamoto.

Nothing new is seen in the addition of Vitamin D as in claim 36 as it is routinely used with calcium to enhance absorption. Therefore, it would have been obvious to add vitamin D3 to a mineral supplement as it is routinely used with calcium to enhance absorption.

Claim 32 further requires the use of the plant ash in suspension and claim 33 an aqueous form. The reference to Miyamota discloses mixing the mineral powder to make a suspension. However, a suspension has been disclosed because the mineral powder was mixed with water (abstract). Therefore, it would have been obvious to make a suspension in aqueous form as claimed.

Claim 34 further requires a colloidal suspension. Such a suspension could be milk. It is well known to fortify milk composition with minerals. Therefore, it would have been obvious to add colloidal suspensions to the claimed composition.

***Allowable Subject Matter***

Claims 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 38 would be allowable if it were amended to depend on claim 37.

**ARGUMENTS**

Applicant's arguments filed 7-5-06 have been fully considered but they are not persuasive. Applicants argue that the phrase "whereby the resulting consumable mineral supplement composition has varying mineral content depending upon said plant material provided in step a" did not constitute new matter as in the Advisory Action. However, no phrase was seen as such. The Examiner agrees that there is support for the phrase as described in the Remarks.

Applicants argue that the reference makes a different product than that of the reference because there is no teaching to isolate and process the plant ash to make a supplement. However, this is not seen, as applicants specification does not disclose any particular steps of isolating, but the use of the whole reacted composition of plant ash and acids (0026). If the mineral supplement is to be tableted it can be isolated as solids by evaporating (0026). The reference also evaporates to a powder.

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Applicants argue that since fruits and vegetables can be dipped that this is not a method for making a consumable product. This is not seen as eating the dipped fruit or vegetable means that the product is consumable. Also, it is well known that minerals in general are ingested in the form of tablets, capsules, and in capsules made of gelatin.

Applicants argue that claim 21 is not to a recipe. However, In re Levin is not now applied to claim 21.

Applicant argues that Miyamoto does not disclose that the product is consumable. However, since it is used to dip fruits and vegetables in it, then it has to be consumable since these items are eaten.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H. Pratt  
HELEN PRATT  
PRIMARY EXAMINER

7-13-06